IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-11-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL Nos.2579 OF 2003 & 2068 OF 2004

W.A.No.2579/2003 :

Pudukottai Central Co-operative Bank Limited,
rep.by its Special Officer,
Pudukottai. ... Appellant

-vs-

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.K.Saminathan ... Respondents

W.A.No.2068/2003 :

K.Saminathan ... Appellant

-vs-

1.The Presiding Officer,
Labour Court,
Tiruchirapalli.

2.Pudukottai Central Co-operative Bank Limited,
rep.by its Special Officer,
Pudukottai. ... Respondents

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Appeals under Clause 15 of the Letters Patent against the order of this Court dated 24.06.2003 and made in WP.No.5544/95.

WP.No.5544 of 1995 : This Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings and on the file of the first respondent made in I.D.No.8/92

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Labour Court, Tiruchirapalli (Madurai) Labour Court I.D.No.303/86 and the impugned award dated 11.07.94 and quash the same as illegal, against the law and direct the second respondent to reinstate the petitioner into service with full back wages.

For appellant in W.A.No.2579/2003 & respondent No.2 in W.A.No.2068/2004 : Mr.R.Parthiban

For appellant in W.A.No.2068/2004 & respondent No.2 in W.A.No.2579/2003 : Mr.AR.L.Sundaresan, Senior Counsel, for Mrs.A.L.Gandhimathi.

COMMON JUDGMENT

S.PALANIVELU,J.

These appeals have been filed, one by the management and the other by the workman, against the order, dated 24.06.2003, made in W.P.No.5544 of 1995, whereby the writ petitioner/workman was directed to be reinstated in service with continuity of service, but without back wages.

2. For the sake of convenience, the litigative status of the parties is referred to as per the Writ Petition.

3. Petitioner joined the services of the respondent bank in 1970 as a Junior Supervisor. In 1978, he was dismissed from service on certain charges. In view of the settlement arrived at on 29.02.1980, which was the outcome of conciliation proceedings initiated before the Assistant Commissioner of Labour, Pudukottai, he was absorbed as a fresh entrant from 01.03.1980, as a Clerk. Ever since 1977, he was also the General Secretary of the Pudukottai Central Co-operative Bank Employees' Union, which is affiliated to A.I.B.E.A. Since he had been espousing the cause of labour community, voicing the service conditions of other employees, he earned wrath of the management. As he came to know that the Special Officer made some defamatory remarks against him in his personal files, he issued a lawyer's notice on 05.08.1983, calling upon the Special Officer to withdraw the remarks. On 16.08.1983, the Special Officer gave a reply. Petitioner instituted a suit for defamation against the said Officer. However, on 16.08.1983 itself, a charge memo came to be issued to the petitioner, alleging the misconduct of defaming the Special Officer. Petitioner sent a reply, dated 25.08.1983, denying the imputations. Not content with the explanation, the respondent management appointed an Enquiry Officer, to conduct a departmental enquiry against the petitioner, and a charge sheet was also served on him. Subsequently, he was suspended from service with effect from 28.10.1983.

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4. On 03.12.1983, the respondent again issued a second charge sheet to the petitioner, indicating the lapses, which were allegedly committed by him while he was in service at Karambakudi Branch, during the year 1981. Since the petitioner had not been attending the hearings of enquiry, the enquiry was conducted ex parte. The following charges were framed against the petitioner in two charge sheets :

> (i) Petitioner was using abusive language in the communications addressed to the management, in the capacity of General Secretary of the union, and he made false and unnecessary allegations against the management, causing disgrace and injury to its goodwill.
>
> (ii) While the petitioner was working as a Cashier in Karambakudi Branch, he disbursed money, without making proper entries as also prior sanction from the Branch Manager, and that there were various lapses with regard to money transactions with reference to payments to various persons irregularly, by means of which, he caused loss to the respondent bank.

5. After the enquiry, on 14.01.1984, the Enquiry Officer submitted a report, stating that the charges framed against the petitioner were proved, which was served on the petitioner, who, in turn, submitted his representation. Not satisfied with that, the respondent management dismissed the petitioner from service on 24.03.1984 with effect from 28.10.1983, i.e., the date of suspension.

6. Petitioner preferred an appeal before the Chairman of the respondent management, which, however, suffered rejection. Thereafter, he raised an industrial dispute in I.D.No.303 of 1986 before the Labour Court, Madurai. On 31.05.1991, the Labour Court, Madurai, held that the enquiry conducted by the management was not proper and, as such, it was liable to be set aside, giving the management an opportunity to let in evidence to prove the charges against the petitioner. On the basis of the said finding, proceedings were conducted before the said Court and, subsequently, the case was transferred to Labour Court, Trichy, and renumbered as I.D.No.8 of 1992. On 11.07.1994, an award was passed, dismissing the petition. Thereafter, the petitioner filed Writ Petition.

7. A learned single Judge, after scanning the entire materials, set aside the first charge viz., use of abusive language and false propaganda by the petitioner, and upheld the petitioner's guilt of the second charge, directing the respondent to reinstate the petitioner in service with continuity of service, but without back wages. Hence, these appeals by both the parties.

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8. As far as the first charge is concerned, it is the outcry of the petitioner that in order to curtail his trade union activities, the management has adopted an unfair labour practice, with a vindictive attitude, to victimise him and, as per the settled legal principles, bona fide expression of genuine grievances and legitimate criticism of the activities of the management would not constitute misconduct or insubordination. It is further contended by the petitioner that the way in which he was treated by the Management would be an example to other employees to desist them from involving in union activities.

9. With regard to second charge, it is his contention that verification and checking of entries as regards payment of money are the responsibilities of the Branch Manager, which was admitted by one Shanmugam, who gave evidence on behalf of the management and that omissions and commissions were already rectified even before issuance of charge sheet; further, the management issued charge memo after a lapse of three years; due to the workload, two or three entries occurred while he was carrying out them in the account books and, at best, they could be termed to be minor mistakes, which would, in no way, lead to cause loss to the bank nor affect the goodwill of the bank in the locality.

10. As for the first charge, this Court has gone through the communications, emanated from the petitioner in the capacity of General Secretary of the Employees Union. Though they appear to have contained some harsh language, they would not, in any way, lead to pounce upon a conclusion that it is a misconduct, nor do they constitute a basis for framing the charges against the petitioner. Hence, the contention of the petitioner that in the capacity of General Secretary of the Employees Union, he made the statements is quite reasonable and acceptable. The discussion with regard to appreciation of the materials on record by the learned single Judge is more appropriate and there is no need to interfere with his finding in this regard.

11. In so far as the charge with regard to the lapses on the part of the petitioner is concerned, they pertain to money transactions, which is the vital business of the bank. If any lapse occurs here and there, it may be termed to be an inadvertence of the employee concerned. If such lapses continue to recur in the day-to-day business, which involve money transactions, certainly, they would invite financial loss to the bank like that of the respondent and its goodwill will also get impaired. The staff, who are responsible for the money transactions, are expected to be more careful in such affairs and, by their dereliction in duty, the ultimate sufferers will be the customers. The learned single Judge has taken much pain in deciding this issue and come out with a finding, confirming the proof of second charge.

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12. Further, the second charge pertains to 11 occasions of wrong entries with reference to pay-in and pay-out transactions. The Labour Court, in its award, has elaborately and meticulously discussed this aspect and reached a conclusion that the petitioner was responsible for those wrong entries, which occurred during a period of nine months. A careful scrutiny of the award of the Labour Court in this regard shows a classical dereliction of duty on the part of the petitioner. The corollary of the above discussion would be, the second charge stands proved against the petitioner.

13. The grounds, on which the petitioner makes an inroad, are thus :

(a) The principles of natural justice have been grossly violated, which are evident from two occasions. The then Special Officer one M.Swamidoss gave a complaint against the petitioner, alleging that he was assaulted by some persons, at the instigation of the petitioner, and he passed the order of dismissal and also acted as the appellate authority, by confirming the said order.

(b) The appointment of one Anaiyappan, advocate, who happened to be the Legal Adviser of the Managemen and who advised the management in legal matters and drafted the charges against the petitioner and, further, he appeared before the Labour Court, representing the management, and conducted the proceedings, which would vitiate the enquiry proceedings.

(c) One Rangasamy, the then Manager of Karambakudi Branch, also committed similar mistakes with reference to the debit and credit entries and by means of his carelessness, the bank incurred loss and the funds of the bank were misused and that he was also suspended from service, but, after enquiry, he was let off with a flea-bite penalty of stoppage of increment for one year and, thereafter, he was reinstated in service.

14. On grounds (a) and (b), it is vehemently contended by the learned Senior Counsel for the petitioner that during the domestic enquiry proceedings, the principles of natural justice were ignored.

15. In this connection, it shall be stated that the aspect as regards the appointment of one Anaiyappan, advocate, as the Enquiry Officer, and the dismissal order on the appeal representation by one Swamidoss, was duly discussed by the learned single Judge. This aspect was also taken into consideration at the time of determining the quantum of punishment. It had been rightly observed by the learned single Judge that it would be a futile exercise to remit the matter back to the Labour Court, for deciding the quantum of punishment. If it is considered that the principles of natural justice are violated in the conduct of the domestic enquiry proceedings, it is to be noted that the parties have adduced evidence before the Labour Court with regard to the said aspect and, hence, no prejudice has ever caused to the petitioner in this regard.

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16. On ground (c) i.e., with regard to the penalty imposed on one Rangasamy, who was the then Manager of Karambakudi Branch, it is contended by the petitioner that the said Rangasamy also indulged in committing similar errors with regard to money transactions; as many as five charges were framed against the said Rangasamy and, though the charges were proved, only lesser punishment of stoppage of increment for one year without cumulative effect was imposed on him, thereby there is discrimination by the management in awarding penalties to its employees.

17. In this context, learned Senior Counsel for the petitioner drew attention of this Court to a Division Bench decision of this Court in M.Rajamanickam v. Bharat Heavy Electricals Ltd. and another, 1997 (3) L.L.N.550, in which it was held as follows :

> "There is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination is writ large on the record and the Court cannot overlook the same. There is no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in the present case was higher than compared to that of Meenakshisundaram. The treatment meted out to the appellant suffers from the vice of arbitrariness and Art.14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Art.14 of the Constitution of India. The order of punishment is set aside on the ground that the penalty imposed on the appellant is hostile discrimination, harsh and disproportionate to the proved misconduct."

18. On this aspect, if the second show cause notice issued to the said Rangasamy on 31.12.1987 is subjected to a perusal, it shows that he was not directly involved in the wrong entries, but, they were made by the staff, working under him. The imputation was that in supervisory capacity, he failed to notice those wrong entries and, hence, the bank incurred loss. But, the charge against the petitioner is different. It was stated that he himself made wrong entries. Hence, the duties of Rangasamy were not akin to those of the petitioner and, therefore, it cannot be construed that he is a similarly placed person like the petitioner, so also the delinquency on the part of the petitioner on par with that of Rangasamy. Therefore, the said decision is of no avail to the petitioner.

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19. Conversely, learned counsel for the respondent placed reliance upon a decision of the Honourable Apex Court in Indian Overseas Bank v. I.O.B.Staff Canteen Workers' Union and another, 2000 (4) Supreme Court Cases 245, wherein it was observed as under :

> "The single Judge has undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material, which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken."

20. However, in the recent judgment delivered by the Honourable Apex Court in MATHURA PRASAD vs. UNION OF INDIA [(2007) 1 SCC 437], considering the entire case law on the subject of judicial review, the Apex Court has categorically and in no uncertain terms has ruled:

> "When an employee, by reason of an alleged act of misconduct, is sought to be deprived of his livelihood, the procedures laid down under the sub-rules are required to be strictly followed. A judicial review would lie even if there is an error of law apparent on the face of the record. If statutory authority uses its power in a manner not provided for in the statute or passes an order without application of mind, judicial review would be maintainable. Even an error of fact for sufficient reasons may attract the principles of judicial review."

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21. In the case on hand, the learned single Judge, exercising the power conferred under Article 226 of the Constitution of India, has taken pains to discuss the matter at length, which cannot be branded as without power, in view of the above judgment of the Honourable Apex Court in Mathura Prasad case. Therefore, this part of argument advanced on the part of the Management is rejected. Moreover, the letters on behalf of the union addressed to the management appear to have emanated in the years

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1981,1982 and 1983 i.e., long prior to the passing of suspension order on 28.10.1983 and the last letter addressed by the petitioner to the management being dated 06.07.1983. Just because the petitioner, as General Secretary of the union, sent communications to the management with some unnecessary language, it would not invite framing of charges nor would it constitute a misconduct. Further, the management has not attributed any motive on the part of the petitioner, for using of such language by the petitioner. In other words, the petitioner had no grudge against his superiors on the dates of issuing those letters. So, the finding arrived at by the learned single Judge with regard first charge, in our view, is proper.

22. Learned counsel for the respondent also garnered support from a decision of the Apex Court in Suresh Pathrella v. Oriental Bank of Commerce, 2007 (1) Supreme Court Cases (L&S) 224, for a proposition of law that even though there was no proof of mandatory loss to the bank, it would not form a ground for taking a lenient view, for the proof of misconduct of a bank officer. The operative portion of the said decision has been culled out as under :

> "22. In the present case, the appellant acted beyond its authority in breach of the Bank's regulation. Regulation 3 (1) of the Bank's Regulations required that every officer of the Bank at all times takes all possible steps to protect the interest of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which will be unbecoming of a bank officer. It is a case of loss of confidence in the officer by the bank. In such a situation, it would be a futile exercise of judicial review to embark upon the decision of the disciplinary authority removing the officer from service, preceded by an enquiry, and to direct the bank to take back the officer in whom the bank has lost confidence, unless the decision to remove the officer is tainted with mala fides or in violation of principles of natural justice and prejudice to the officer is made out...."

23. For the foregoing discussions and following the principles laid down in the above said decisions, we are of the considered opinion that the petitioner who is expected to maintain complete devotion and diligence, has deviated from the regulations and, hence, the order of the learned single Judge, directing reinstatement of the petitioner with continuity of service, but without back wages, is quite in order and we find no reason to cause our interference into such well considered and

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merited order passed by the learned single Judge. Accordingly, both these Writ Appeals are dismissed. No costs. Consequently, the connected W.A.M.P.No.3983 of 2003 and W.V.M.P.No.6738 of 2003 are closed. We make it clear that if by this time, the petitioner/workman has attained the age of superannuation, he shall be deemed to have retired from service in the usual course on attaining the age of superannuation, for all other consequential benefits.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dixit/Rao

To

1. The Presiding Officer,
Labour Court,
Tiruchirapalli.

2. The Special Officer,
Pudukottai Central Co-op.Bank Ltd.,
Pudukottai.

1 cc To Mr.R.Parthiban, Advocate, SR.70007.
1 cc To Mr.AL.Gandhimathi, Advocate, SR.69891.

W.A.Nos.2579/2003 &
2068 of 2004

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